IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5386 of 2007
Date of decision: 18.10.2007

Dev Raj **...Petitioner**

Versus

Krishna Devi **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Malkeet Singh, Advocate for the petitioner.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order passed by the learned Courts below whereby application filed by the petitioner for interim injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure was dismissed.

The suit was filed by the petitioner/plaintiff for declaration and permanent injunction. It was claimed that previously the petitioner/plaintiff had purchased property in dispute in the restricted auction in the year 1982. However, the same were later on set aside on technical ground. It is not disputed that petitioner did not challenge the order of cancellation of sale in his favour and the same attained finality. It is claimed that the possession of the land remained with the petitioner/plaintiff. The same land was allotted to the respondent/defendant in the year 1988-89. In fact the challenge in the suit is also to the order of allotment in favour of the respondent/defendant, however, without impleading any of the authority, who had allotted the land to the respondent/defendant. Both the Courts below did not find favour with the contention raised by learned counsel for the petitioner/plaintiff keeping in view the fact that on earlier occasion, Civil Suit No.257 of 1994 filed by the petitioner for permanent injunction was dismissed with costs on December 20, 1995 where the issues were substantially the same, which fact was concealed by the petitioner/plaintiff while filing the present suit. Even otherwise the Court found that prima facie, it did not have the jurisdiction to entertain the suit for the reason that it could not adjudicate upon the allotment made under the Punjab Package Deal (Disposal of Properties)

Act, 1976. It was further found that that infact after the land was sold to the respondent/defendant, conveyance deed was registered on August 23, 1990, which attained finality and thereafter respondent/defendant is lawful owner of the property and actual physical possession was delivered to her on August, 4, 1989. Once in earlier suit where the specific issue as to whether petitioner/plaintiff was in possession of the suit land for the last more than 40 years had been decided against the petitioner/plaintiff by considering the same on merits, there was no occasion for the petitioner/plaintiff to raise the same plea again that he was in possession of the land and his possession needs to be protected.

Accordingly, there is no error of jurisdiction committed by the Courts below in declining interim injunction to the petitioner/plaintiff.

The revision petition is dismissed.

October 18, 2007 **(Rajesh Bindal)**
Pka **Judge**